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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/029,591
Filing Date: December 21, 2001
Appellant(s): JOINER ET AL.

Kevin J. Zilka
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/21/06 appealing from the Office action mailed 10/26/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. (US 6,278,694),in view of Turek et al (US 6,021,439).

As for Claim 1 , Wolf et al. discloses a method comprising:

(a) collecting network traffic information utilizing a plurality of agents (see Fig. 5A; col. 5, lines 1 2-62).,

(b) consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1 ; col. 3, line 16 - col. 2, line 20)., and

(c) reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly discloses the method including charging a fee for responding based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the method of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al, for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 2, the modified Wolf et al. further discloses the method, including:

determining the reoccurring fee associated with the reporting based on the number of the agents (see Supra Fig. 1 of Wolf et al).

As for Claim 3, the modified Wolf et al. further discloses the method including:

determining the reoccurring fee associated with the reporting based on the number of the host controllers (see 1d.).

As for Claim 4, the modified Wolf et al. further discloses the method including:

determining the reoccurring fee associated with. the reporting based on the number of the zone controllers (see Supra Claim 1).

As for Claim 7, the modified Wolf et al. further discloses the method including:

charging the user the reoccurring fee (see Id.).

As for Claim 8, the modified Wolf et al. further discloses the method including:

charging the user the recurring fee utilizing a network (it is obvious to charge the user the fee for utilizing a network).

As for Claim 9, Wolf et al. discloses a computer program product for charging for network analysis, comprising:

(a) code for collecting network traffic information utilizing a plurality of agents (see Fig. 5A; col . 5, lines 12-62)*,

(b) code for cons6lidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1 ; col. 3, line 16 - col. 2, line 20); and

(c) code for reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly discloses the product including code for charging a fee for reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the invention includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the ad to modify the product of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 10, the modified Wolf et al. further discloses the product, including: code for determining the reoccurring fee associated with the reporting based on the number of the agents (see Supra Fig. 1 of Wolf et al).

As for Claim 11 , the modified Wolf et al. further discloses the product including: code for determining the reoccurring fee associated with the reporting based on the number of the host controllers (see Id.).

As for Claim 12, the modified Wolf et al. further discloses the product including: code for determining the reoccurring fee associated with the reporting based on the number of the zone controllers (see Supra Claim 1).

As for Claim 15, the modified Wolf et al. further discloses the product including: code for charging the user the reoccurring fee (see Id.).

As for Claim 16, the modified Wolf et al. further discloses the product including: code for charging the user the recurring fee utilizing a network (it is obvious to charge the user the fee for utilizing a network).

As for Claim 17, Wolf et al. discloses a system comprising'.

(a) logic for collecting network traffic information utilizing a plurality of agents (see Fig. 5A , col . 5, lines 12-62);

(b) logic for consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1; col. 3, line 16 - col. 2, line 20), and

(c) logic for reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly discloses the system including logic for charging a fee for reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the invention includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the system of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 18, the modified Wolf et al. further discloses the system, including:

logic for determining the reoccurring fee associated with the reporting based on the number of the agents (see Supra Fig. 1 of Wolf et al.).

As for Claim 19, the modified Wolf et al. further discloses the system including:

logic for determining the reoccurring fee associated with the reporting based on the number of the host controllers (see 1d.).

As for Claim 20, the modified Wolf et al. further discloses the system including:

logic for determining the reoccurring fee associated with the reporting based on the number of the zone controllers (see Supra Claim 1).

As for Claim 23, the modified Wolf et al. further discloses the system including:

logic for charging the user the reoccurring fee (see Id.).

As for Claim 24, the modified Wolf et al. further discloses the system including:

logic for charging the user the recurring fee utilizing a network (it is obvious to

charge the user the fee for utilizing a network).

As for Claim 25, Wolf et al. discloses a method comprising:

(a) collecting network traffic information utilizing a plurality of agents (see Fig. 5A; col . 5, lines 12-62)',

(b) consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1, col. 3, line 16 - col. 2, line 20); and

(c) reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly discloses the method including charging a fee for reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the ad to modify the method of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 26, Wolf et al. discloses a method comprising:

(a) collecting network traffic information utilizing a plurality of information

collectors (see Fig. 5A; col. 5, lines 12-62).,

(b) consolidating the network traffic information utilizing a plurality of host controllers coupled to the information collectors (see Fig. 1 ; col. 3, line 16 - col. 2, line 20); and

(c) reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly discloses the method including charging a fee for reporting based on a number of at least one of the information collectors, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the ad to modify the method of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of information collectors, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 27, the modified method of Wolf et al. further discloses the method, wherein the fee is reoccurring.

As for Claim 28, Wolf et al. discloses a computer program product comprising:

(a) code for collecting network traffic information utilizing a plurality of information collectors (see Fig. 5A; col. 5, lines 12-62).,

(b) code for consolidating the network traffic information utilizing a plurality of host controllers coupled to the information collectors (see Fig. 1 ; col. 3, line 1 6 - col. 2, line 20), and

(c) code for reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.', Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly discloses the product including code for charging a fee for reporting based on a number of at least one of the information collectors, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the ad to modify the product of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of information collectors, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 29, the modified product of Wolf et al. further discloses the product,

wherein the fee is reoccurring.

Claims 30- 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. (US 6,278,694),in view of Turek et al (US 6,021,439), and further in view of Furukawa et al (US 6,145,011).

As per claim 30, neither Wolf et al nor Turek et al disclose wherein the reoccurring fee is based on a tiered system, but Wolf et al does disclose a method for collecting and reporting monitored data for networked traffic in the abstract, lines 1-2.

However, Furukawa et al discloses:

Wherein the reoccurring fee is based on a tiered system, (col. 43, line 13-15, 8-tiered system). Furukawa discloses this limitation in an analogous art for the purpose of showing that an 8-tiered system can be incorporated into an information charging system as shown in col. Col. 21, line 66-col. 22, line 4.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to base a recurring fee on a tiered system with the motivation of allowing different fees to be charged based on tier-level.

As per claim 31, neither Wolf et al nor Turek et al disclose wherein the number of the at least one of the agents, the host controllers, and the zone controllers are set for each tier, but Wolf et al does disclose a method for collecting and reporting monitored data for networked traffic in the abstract, lines 1-2.

However, Furukawa et al discloses:

wherein the number of the at least one of the agents, the host controllers, and the zone controllers are set for each tier, (Col. 43, lines13-15, 8-tiered system for

classes. Furukawa et al discloses this limitation in an analogous art for the purpose of showing more than one tier for different classes in the system.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the number of the at least one of the agents, the host controller, and the zone controller to be set for each tier with the motivation of allowing at least one of the agents, the host controller, and the zone controller to charge a fee according to a specific tier.

As per claim 32, neither Wolf et al nor Turek et al disclose wherein the reoccurring fee is based on a non-linear function, but Wolf et al does disclose a method for collecting and reporting monitored data for networked traffic in the abstract, lines 1-2.

However, Furukawa et al discloses:

wherein the reoccurring fee is based on a non-linear function,(Col. 21, line 65-col. 22, line 2, network charging system). Faraway discloses this limitation in an analogous art for the purpose of showing charging according to user frames.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the reoccurring fee is based on a non-linear function with the motivation of charging according to a communication value.

As per claim 33, neither Wolf et al nor Turek et al disclose wherein the reoccurring fee is a monthly fee, but Wolf et al does disclose a method for collecting and reporting monitored data for networked traffic in the abstract, lines 1-2.

However, Furukawa et al discloses:

Wherein the reoccurring fee is a monthly fee, (Col. 22, lines 4-10, constant amount is charging for a certain period [month]). Furukawa et al discloses this limitation in an analogous art for the purpose of showing that certain amounts are charged for certain periods.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the reoccurring fee to be a monthly fee in order to have a fee that is charged consistently on a monthly basis.

As per claim 34, neither Wolf et al nor Turek et al disclose wherein each agent incurs a first reoccurring fee, each host controller incurs a second reoccurring fee grater that the first reoccurring fee, and each zone controller incurs a third reoccurring fee greater that the second reoccurring fee, but Wolf et al does disclose a method for collecting and reporting monitored data for networked traffic in the abstract, lines 1-2.

However, Furukawa et al discloses:

wherein each agent incurs a first reoccurring fee, each host controller incurs a second reoccurring fee grater that the first reoccurring fee, and each zone controller incurs a third reoccurring fee greater that the second reoccurring fee,(Col. 43, lines13-15, 8-tiered system for classes, w/ col. 22, lines 2-4, shows charges are made according amount of information transferred in the ICS user frame, meaning the more information that is transferred by the user, the higher the charge each time the information is transferred. Faraway discloses this limitation in an analogous art for the purpose of showing more than one tier for different classes in the system.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for each host controller to incur a second reoccurring fee greater that the first reoccurring fee, and each zone controller to incurs a third reoccurring fee greater that the second reoccurring fee with the motivation of allowing at least one of the agents, the host controller, and the zone controller to charge a fee according to a specific tier.

(10) Response to Argument

Due to further consideration of the claims, and also the argument presented in the appeal brief, the examiner has withdrawn the 35 USC 101 rejection of claims 1-8, 25 and 26.

With respect to claims 1, 9, and 17, appellant argues that Wolf does not meet applicant's specific claim language, namely that "the network traffic information [is consolidated] utilizing a plurality of host controllers coupled to the agents", but merely discloses monitoring data to a single network manager. However, Wolf discloses that the network manager produces a traffic report for the selected address pairs in col. 8, lines 13-14. This limitation does meet the applicant's claimed "reporting...utilizing a plurality of zone controllers", since the network manager of Wolf contains a memory storage medium that stores three programs in col. 5,lines 1-7. The first program controls polling and processing of polled monitoring data from the probes P1 and P2, while the second program does the same for probe P3, thus demonstrating the fact that this network manager has a plurality of programs that handle network communications for each probe, thus handling different zones.

Also, with respect to independent claims 1, 9, and 17, appellant also argues that Turek does not disclose "determining a reoccurring fee associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers", but merely discloses managing quality-of-service information on behalf of one or more instrumented Web servers. However col. 8, lines 38-45 discloses that *the distribution for a fee* occurs on behalf of one or more instrumented Web servers, meaning that these fees reoccur since more than one Web server needs to be accommodated. Since these fees are determined according to Web server, and the Web server handles the communication in the network, the fee is therefore associated with the agents, the host controller and zone controllers.

Appellant argues that the examiner does not establish a prima facie case of obviousness, and that the examiner does not meet the third element of the prima facie case of obviousness, which is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure". However, as described above with respect to claims 1, 9 and 17, the combination of Wolf et al, and Turek et al disclose the limitations of claims 1, 9 and 17.

With respect to claims 2, 10, and 18, appellant argues that prior art used does not disclose "determining the reoccurring fee associated with the reporting based on the number of the agents". However, the combination of Wolf and Turek disclose this limitation as described above in the rejection. These claims also depend from

independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons.

With respect to claims 3, 11, and 19, appellant argues that prior art used does not disclose "determining the reoccurring fee associated with the reporting based on the number of the host controllers". However, the combination of Wolf and Turek disclose this limitation as described above in the rejection. These claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons.

With respect to claims 4, 12, and 20, appellant argues that prior art used does not disclose "determining the reoccurring fee associated with the reporting based on the number of the zone controllers". However, the combination of Wolf and Turek disclose this limitation as described above in the rejection. These claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons.

With respect to claims 5, 13, and 21, appellant argues that prior art used does not disclose "adding additional agents coupled to the host controllers". However, the combination of Wolf and Turek disclose this limitation as described above in the rejection. These claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons.

With respect to claims 6, 14 and 22, appellant argues that prior art used does not disclose "adjusting the reoccurring fee based on the number of additional agents". However, the combination of Wolf and Turek disclose this limitation as described above

in the rejection. These claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons.

With respect to claims 2, 10, and 18, appellant argues that prior art used does not disclose "determining the reoccurring fee associated with the reporting based on the number of the agents". However, the combination of Wolf and Turek disclose this limitation as described above in the rejection. These claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons.

With respect to claim 25, appellant argues that Wolf does not meet applicant's specific claim language, namely that "the network traffic information [is consolidated] utilizing a plurality of host controllers coupled to the agents". However, Wolf discloses that the network manager produces a traffic report for the selected address pairs in col. 8, lines 13-14. This limitation does meet the applicant's claimed "reporting...utilizing a plurality of zone controllers", since the network manager of Wolf contains a memory storage medium that stores three programs in col. 5,lines 1-7. The first program controls polling and processing of polled monitoring data from the probes P1 and P2, while the second program does the same for probe P3, thus demonstrating the fact that this network manager has a plurality of programs that handle network communications for each probe, thus handling different zones.

With respect to independent claims 26 and 28, the appellant argues that Turek does not disclose "determining a fee associated with the distributed network analysis

based on a number of the information collectors". However, this limitation is disclosed in Turek as described above in preceding paragraph.

With respect to claim 30, appellant argues that prior art does not disclose "wherein the reoccurring fee is based on a tiered system". However, the Furukawa reference was added to cure this deficiency. In col. 43, line 13-15, Furukawa discloses an 8-tiered system. Furukawa discloses this for the purpose of showing that an 8-tiered system can be incorporated into an information charging system as shown in col. Col. 21, line 66-col. 22, line 4.

With respect to claim 31, appellant argues that prior art does not disclose "wherein the number of the at least on of the agents, the host controllers, and the zone controllers are set for each tier". However, Furukawa et al was added to cure this deficiency. In Col. 43, lines13-15, an 8-tiered system for classes is disclosed by Faraway discloses this limitation for the purpose of showing more than one tier for different classes in the system.

With respect to claim 32, appellant argues that prior art does not disclose "wherein the reoccurring fee is based on a non-linear function". However, Furukawa et al was added to cure this deficiency. In Col. 21, line 65-col. 22, line 2, a network charging system is disclosed for the purpose of showing charging according to user frames.

With respect to claim 33, appellant make arguments similar to those discussed above, and claim 33 is therefore rejected for the same reasons.

With respect to claim 34, appellant argues that prior art does not disclose "wherein each agent incurs a first reoccurring fee, each host controller incurs a second reoccurring fee greater than the second reoccurring fee". However, Furukawa et al was added to cure this deficiency. In Col. 43, lines13-15, an 8-tiered system for classes is shown. In addition, col. 22, lines 2-4 of Furukawa et al shows charges are made according amount of information transferred in the ICS user frame, meaning the more information that is transferred by the user, the higher the charge each time the information is transferred. In this case, Furukawa et al shows more than one tier for different classes in the system.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Akiba Robinson-Boyce

Conferees:

John Hayes

John Weiss

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER